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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/596,806	06/19/2000	Harry J. Buncke	540P	4594

7590 06/15/2004  
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San Francisco, CA 94108

EXAMINER

ODLAND, KATHRYN P

ART UNIT PAPER NUMBER

3743

DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/596,806

Applicant(s)

BUNCHE, HARRY J.

Examiner

Kathryn Odland

Art Unit

3743

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 05 April 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 26 April 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

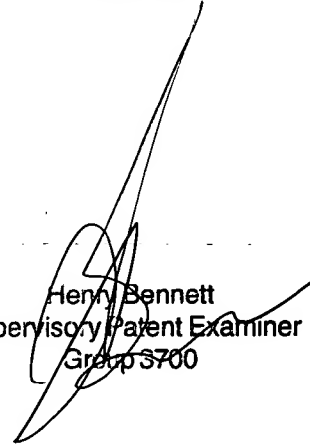
Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-11.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_.

Continuation of 2. NOTE: Applicant has amended the specification to include the phrase, "As illustrated, the elongate stem 14 is much narrower than the elongate gripping handle 16 and rigidly projects forward from a forward end of the handle 16." The examiner agrees, the figures show that the stem is narrower than the gripping handle. However, there is no support in the originally filed specification to support a stem that is rigid. Although the rigid stem limitation is in reference to the prior art, there is no support for the rigidity of the stem in the originally filed current application, since rigidity is a relative term and a reference point has not been established. Also, it is not clear as to the intent for the degree of rigidity. Moreover, the independent claims 1, 3 and 9 have been amended to include limitations not previously presented; thus, further search and consideration is required. Moreover, the limitation of a rigid stem has also been included in claims 1 and 3, which is considered new matter. Further, applicant argues, "...the Examiners pointed out that the word 'handle' in the claims should be read as broadly as possible, without any reference whatsoever to the specification or drawings." However, the examiner respectfully disagreed with this statement. The examiner is required to interpret the claim language "reasonably broadly" where the device of the prior art rejection is capable of performing the functions claimed and did not dismiss the specification or drawing without any regard whatsoever. However, functional language is not given patentable weight in apparatus claims. Therefore, if the prior art is capable of performing the function the limitation is met. Applicant is advised to incorporate structural features to define over the prior art. Moreover, applicant states, "The Examiners seemed satisfied in the interview that any distinction made from the literal structure shown in Swiggett would support allowance of the apparatus claims. That distinction is now clearly presented." Again, the examiner respectfully disagrees. That presented in the after final amendment presents new matter, changes the scope of the claims requiring further considerations and search and no agreements on patentable claim language was made in the interview. The examiner has earnestly attempted to work with the attorney to place the claims in condition for allowance.



Henry Bennett  
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Group 3700